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Docket number _____

In the United States Supreme Court

Brian Homer March and Victoria Baca March

versus

Internal Revenue Service

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit - appeal number 02-2087

Petition for Writ of Certiorari

Brian Homer March and Victoria Baca March, Pro se
10912 Cascada Azul Place North West
Albuquerque, New Mexico 87114
(505) 898-5392

Questions presented for review

Questions to be resolved by The United States Supreme Court: What has the Secretary of the Treasury of the United States determined that the individual United States Citizen, domiciled within the United States, deriving wages from personal labor, can ask for or demand as evidence of an income tax due and owing the United States Treasury where the evidence proffered is in conformity with published code and consistent with The Federal Rules of Evidence? When did the Secretary make and publish the determination in the Code of Federal Regulations? Whether the Tenth Circuit Court of Appeals has decided a question of compelling public interest? Whether the Tenth Circuit Court's ruling contravenes the authority of a United States Government Agency, contravenes the Code of Federal Regulations, usurps the authority of the Secretary of the Treasury of the United States violating the separation of powers, and conflicts with extant authority on the subject matter? Whether the audit by the Government Accounting Office verified that the IRS RACS 006 is not consistent with the requisites of the Code and rules of Evidence and is insufficient to verify an individual's income tax liability?

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Code occurring at 26 U.S.C.A. § 301.6203-1 of the Code of Federal Regulations provides that evidence that an individual citizen, domiciled within the United States, deriving wages from personal labor, becomes subject to requirement that sums be deposited with the Treasury when the summary record of assessment identifying that citizen is signed by an assessment officer. The Code further prescribes that the summary record, through supporting documents, must contain the following: (1) identification of the taxpayer; (2) character of liability assessed; (3) taxable period, if applicable; (4) and amount of assessment. The Code also provides, upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of assessment. Without production of the summary record of assessment, the individual citizen is deprived of basic forensic devises to test the validity of the alleged liability. Substantial authority establishes that IRS form 23-C is the de facto assessment. See Internal Revenue Manual 5312(1), MT 5300-1 (11-15-85), *United States v. Van Griffin*, 874 F.2d 634, 638 (9th Cir. 1989)(government manuals admissible as party admissions under Fed.R.Evid. 801(d)(2)(D)), *Meyersdale Fuel Co. v. United States*, 44 F.2d 437, 443 (Ct.Cl. 1930), *Brafman v. United States*, 384 F.2d 863 (5th Cir. 1967), *Stallard v. United States*, 806 F.Supp. 152, 158 (W.D.Tex. 1992), *Ianelli v. Long*, 329 F.Supp. 1241, 1242 (W.D.Pa. 1971), *Planned Investments, Inc. v. United States*, 881 F.2d 340, 343 (6th Cir. 1989), *Robinson v. United States*, 920

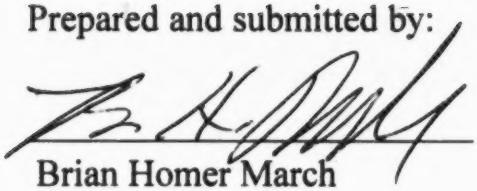
F.2d 1157, 1158 (3rd Cir. 1990). The Tenth Circuit Panel disregarded the rule of precedent and usurped the authority of the Treasurer by ruling, in effect, that no article conforming to Code exists to show that an individual citizen is a taxpayer owing an income tax to the treasury. The effect of the decision of the Tenth Circuit Panel is to deprive the individual citizen of any means whatsoever to validate an alleged income tax obligation clearly placing virtually every agent acting on behalf of the Internal Revenue Service in jeopardy of criminal prosecution and civil liability for violation of 26 USC 7214(a). The decision by the Tenth Circuit Panel resulted from the panel's acceding to the demands of the Internal Revenue Service in opposition to Brian Homer March and Victoria Baca March's simple request for Code required information. In response to the Marchs' requests, unknown agents proffered documents identified as "RACS 006's." The Tenth Circuit Panel ruled that the form RACS 006 satisfies the statutory and regulatory notice requirements. Presumably, the Tenth Circuit Panel meant that the RACS 006 is the de facto evidence which the individual citizen, domiciled in the United States, deriving wages from personal labor can rely on to validate an income tax due and owing the United States Treasury. This honorable court is noticed: (1). Mr. Gene Dodaro, Assistant Comptroller General, Accounting and Information Management Division, reporting to Congress, testified that the RACS 006 could not serve as the assess-

ment for reason that the RACS 006 does not contain the required information such as type of tax, (2). The Government Accounting Office report found that the information contained in Internal Revenue Service files contained discrepancies to the effect that auditors were deprived of means to determine what, if any, of the information contained in the Internal Revenue Service files was reliable, (3). The Government Accounting Office report found that the Internal Revenue Service lacked sufficient security to prevent unauthorized browsing of individual files and unauthorized changes to the individual files without detection, and (4). The Tenth Circuit Panel did not take judicial notice of the GAO/T-AIMD-96-56 report which the Tenth Circuit Panel knew was for years contemporaneous with those years the Internal Revenue Service subjected the Marchs to an alleged tax liability. This court is noticed: authorities cited by the Tenth Circuit Panel all were either supplanted by the GAO report or are in contempt of the Congressional Report.

Conclusion and remedy sought

Determination by this court that the Tenth Circuit Panel's ruling contravenes the GAO report, usurps the rule making authority of the Secretary of the Treasury, and conflicts with the rule of precedent warrants reversal of the Tenth Circuit Panel's determination that the RACS 006 is sufficient to serve as the assessment and remand to the lower court for further proceedings including dismissal for failure of the IRS to produce a summary record of assessment.

Prepared and submitted by:



Brian Homer March

_____

NOTARY

_____

Commission expiration

and _____

Victoria Baca March

_____

NOTARY

_____

Commission expiration

Certificate of mailing

I, Brian Homer March, certify that March 27, 2004, I mailed Three true and correct copies of the foregoing petition for certiorari to:

David C. Iglesias & Manual Lucero
P.O. Box 607
Albuquerque, New Mexico 87103

Eileen J. O'Connor, Gary R. Allen
& Regina S. Moriarty
P.O. Box 502
Washington, D. C. 20044

Brian Homer March

NOTARY

Commission expiration

(2)

Supreme Court, U.S.
FILED

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In the United States Supreme Court

Brian Homer March and Victoria Baca March

versus

Internal Revenue Service

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit - appeal number 02-2087

Appendix to Petition for Writ of Certiorari

Brian Homer March and Victoria Baca March, Pro se
10912 Cascada Azul Place North West
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UNITED STATES BANKRUPTCY
COURT DISTRICT OF NEW MEXICO

In re: Brian H. March and
Victoria B. March,

Debtors. No. 7-98-14550 MA

ORDER DENYING DEBTORS' OBJECTION TO PROOF OF CLAIM OF INTERNAL REVENUE SERVICE

THIS MATTER comes before the Court on Debtors' Objection to the Proof of Claim Filed by the United States of America Internal Revenue Service (IRS). It is undisputed that the Debtors have not filed tax returns for the years 1992, 1993, 1994, 1995 and 1996. As the basis for their objection, Debtors argue that the IRS had no authority to file substitute returns for those years and did not follow statutory requirements to assess the taxes owed. The Debtors ask this Court to deny the IRS's claim in its entirety. The Court having reviewed the pleadings, briefs and otherwise being fully informed and advised finds:

1. Debtors filed their bankruptcy on July 23, 1998 and were granted a discharge on October 28, 1998.

2. On April 29, 1999, the IRS filed a proof of claim against Debtors' in the amount of $72,650.18 as an unsecured priority claim under 11 U.S.C. 507(a)(8). The remainder of its claim, $11,051.85 in penalties and interest thereon is classified as a general unsecured claim.

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Nothing offered by the Debtors calls this evidence into question.

7. In the context of an objection to claim, the burden is on the objecting party to negate the prima facie evidence of the validity and amount of the claim by refuting one of the facts serving as the basis for the filed claim. Fed. R. Bankr. P. 3001(f); *In re St. Johnsbury Trucking Company, Inc.* 206 B.R. 318, 323 (Bankr. S.D.N.Y. 1997). The Debtors have failed to meet this burden and have not sufficiently refuted the validity of the assessments made by the IRS. No other evidence of a mistatke by the IRS was presented as the Debtors have failed to file theri returns for the years in question. The Court will therefore deny the objection.

IT IS ORDERED that the Objection to Claim of the United States Internal Revenue Service is hereby DENIED.

MARK B. MCFEELEY

UNITED STATES BANKRUPTCY JUDGE

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Suite 103
Albuquerque, NM 87109

I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties, on the date file-stamped above.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:BRIAN HOMER MARCH and No.7-9814550MA

VICTORIA BACA MARCH,
Debtors.

ORDER GRANTING IN PART AND DENYING IN PART DEBTORS' MOTION FOR RECONSIDERATION OF ORDER DENYING DEBTORS' OBJECTION TO PROOF OF CLAIM OF INTERNAL REVENUE SERVICE

THIS MATTER came before the Court on the Debtors' Motion for Reconsideration of Order Denying Debtors's Objection to Proof of Claim of Internal Revenue Service ("Motion for Reconsideration"). In their Motion for Reconsideration, Debtors bring to the Court's attention that they have in fact filed tax returns for the years 1995, 1996, and 1997, in conflict with the Court's finding that the Debtors have not filed tax returns for the years 1992, 1993, 1994, 1995 and 1996. The Motion for Reconsideration should, therefore, be granted to the extent the Court's findings of fact should be revised to correct this error.

The Debtors also point out that they supplied the Internal Revenue Service with unsigned

copies of tax returns for 1992, 1993 and 1994. "An unsigned return is no return at all." *Cohen v. United States (In re Cohen),* 198 B.R. 382, 388 (Bankr.S.D.Fla. 1996)(citing 26 U.S.CA. §§ 6061, 6065; 26 C.F.R. § 1.6061-1(a); *Vaira v. Commissioner,* 52 T.C. 986, 1969 WL 1731 (1969)). Debtors' assertions, therefore, do not invalidate the Court's findings with regard to the returns for the years 1992, 1993 and 1994. Nor do the Debtors' assertions that they filed tax returns for the years 1995, 1996 and 1997 alter the Court's conclusions.

The Motion for Reconsideration also asserts that the failure of the Internal Revenue Service ("IRS") to produce a form 23C renders the IRS's claim for unpaid taxes invalid. The Court has already addressed this argument. The cases Debtors cite in their Motion for Reconsideration do not warrant an alteration of the Court's prior ruling.

WHEREFORE, IT IS HEREBY ORDERED, that the Motion for Reconsideration is granted, in part, to revise the Court's findings of fact with regard to the submission of tax returns.

ORDERED FURTHER, that the Court's findings of fact contained in the Order Denying Debtors' Objection to Proof of Claim of Internal Revenue Service are hereby revised to reflect that the Debtors have not filed tax returns for the years 1992, 1993 and 1994.

ORDERED FINALLY, that the Motion for Reconsideration is herby denied in all other respects.

MARK B. McFEELEY
United States Bankruptcy Court

I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties, on the date file-stamped above.

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Patti G. Hennessy
Law Clerk
(505) 348-2525

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BRIAN HOMER MARCH and
VICTORIA BACA MARCH,
Appellants,
v. CIV 01-895 LH/KBM
INTERNAL REVENUE SERVICE,
Appellee.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This is a bankruptcy appeal under 28 U.S.C. § 158(a), where this Court review the bankruptcy court's legal determinations *de novo* and its factual findings for clear error. *E.g., In re Hedged-Investments Associates, Inc.,* 84 F.3d 1267 (10th Cir. 1996). The matter was referred to me for a recommended disposition. The factual background is fully set out in the parties briefs and the record on appeal and incorporated herein by reference.

The IRS filed a proof of claim for unpaid taxes for various years supported by several "summary Record of Assessment" of "4340" computer data reports. Theses reports are certified and show the "23C" dates. Appellants argue that the IRS's claim is invalid absent production of the actual, signed underlying "23C" forms. These arguments are unavailing for the reasons stated by the Bankruptcy Court in its two orders and by the IRS in its brief. *See also e.g., Taylor v. Internal Revenue Service,* 69 F.3d 411, 418

(3rd Cir. 2000)("We agree with the District Court that the Buncher Group waived the lien issue by failing to raise it in the Bankruptcy Court."). Second, it is patently without merit. Copies of the certification pages for the 4340 exhibits contain the seal. *Record, Doc.* 87 Exh.6.

Wherefore,

IT IS HEREBY RECOMMENDED that the Bankruptcy court be affirmed and this appeal dismissed.

United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BRIAN HOMER MARCH and
VICTORIA BACA MARCH,
Appellants,
v. CIV 01-895 LH/KBM
INTERNAL REVENUE SERVICE,
Appellee.

ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

The Magistrate Judge Filed her Proposed Findings and Recommended disposition on January 2, 2002. *Doc.* 7. The proposed findings notify the parties of their ability to file objections and that failure to do so waives appellate review. To-date no objections have been filed and there is nothing in the record indicating that the proposed findings were not delivered.

Wherefore,

IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Proposed Finding and Recommended Disposition (*Doc.* 7) is ADOPTED;

2. The decision of the Bankruptcy Court is AFFIRMED; and

3. This appeal is dismissed pursuant to the final order entered concurrently herewith.

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

BRIAN HOMER MARCH and
VICTORIA BACA MARCH,

Plaintiffs - Appellants,

v. No. 02-2087

INTERNAL REVENUE SERVICE,

Defendant - Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

(D.C. No. CIV-01-895 LH/KBM)

Submitted on the briefs: (1)

Paul F. Becht of the Becht Law Firm, Albuquerque, New Mexico, for Plaintiff-appellants.

David C. Iglesias, United States Attorney, and Manuel Lucero, Assistant U.S.. Attorney, district of New Mexico, Albuquerque, New Mexico, for Defendant-Appellee.

before KELLY, McKAY, and MURPHY, Circuit Judges.

(1). After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34 (f). The Case is therefore submitted without oral argument.

McKAY, Circuit Judge.

This is a review of a decision by the bankruptcy court denying Appellants' objection to the IRS's proof of claim for unpaid taxes. The facts, as found by the bankruptcy court and unchallenged by Appellants, indicate that Appellants did not file a tax return or pay income tax for the years 1992 through 1997. As part of Appellants' bankruptcy proceeding the IRS filed a proof of claim for unpaid taxes. Appellants objected to the proof of claim, arguing that the IRS failed to comply with certain requirements of the Internal Revenue Code and Treasury Regulations. The bankruptcy court dismissed the objections. on appeal, the district court adopted the recommendation of the magistrate judge and dismissed the appeal. On appeal to this court, Appellants make two claims: (1) that Appellants were never served with the requisite deficiency notices, and (2) that the form provided by the IRS did not contain a seal of the district director of the IRS. Specifically, Appellants claim that the IRS is required to complete Summary Record of Assessment on Form 23C. We review the district court's legal determinations de novo. See in re Hedged-Investments Associates, Inc. 84 F.3d 1267, 1268 (10th Cir. 1996).

With respect to the first claim, Appellants argue that, pursuant to 26 U.S.C. 6203 and 26 C.F.R. 301.6203-1, the IRS must provide a taxpayer, upon request, with an assessment of taxes due. They further allege that the assessment must be made on Form 23C and signed by an authorized officer of the IRS. In response to Appell-

ant's request for a proof of claim for unpaid taxes, the IRS provided Certificate of Assessments and Payments on Form 4340. Appellants assert that Form 4340 does not meet the requirements of the regulations. title 26 U.S.C. 6203 simply provides that [t]he assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

The regulations accompanying this statute provide that "[t]he assessment shall be made by an assessment officer signing the summary record of assessment." 26 C.F.R. 301.6203-1 (2002). The regulations further provide that the summary record of assessment shall include certain information and that upon a taxpayer's request, "he shall be furnished a copy of the pertinent parts of the assessment which set forth [certain information]." Id. As Appellants note, the IRS has historically used Form 23C as the "Summary Record of Assessments" or "Assessment Certificate," as explained in the Internal Revenue Service Manual. As Appellants concede, however, the Service Manual is not binding on this court. Furthermore, no regulation or statute requires that the "copy of the record of the assessment" mentioned in 26 U.S.C. 6203 be made on Form 23C. Nevertheless, regardless of the form used, the IRS must comply with the regulations governing the assessment process. The purpose of these regulations is to ensure both the efficiency and the accuracy of the assessment process. The

signature requirement in 26 C.F.R. 301.6203-1 appears to serve multiple purposes. The requirement ensures that an assessment officer reviews the assessment before it is sent to the taxpayer, and the placing of the officer's signature establishes an effective date of the assessment that is relevant for certain timing requirements. Historically, the document reviewed and signed by the assessment officer has been Form 23C. To ensure the taxpayer's ability to challenge alleged errors in the assessment process, the regulations allow the taxpayer to request a copy of certain parts of the assessment record. However, the courts have generally held that the IRS need not provide a taxpayer with a copy of Form 23C. Instead, the courts have held that the IRS may submit Certificates of Assessments and Payments on Form 4340. Form 4340 details the assessments made and the relevant date that a Summary Record of Assessment (Form 23C) was executed. The courts have also held that these Certificates on Form 4340 "are presumptive proof of a valid assessment." See *Guthrie v. Sawyer*, 970 F.2d 733, 737 (10th Cir. 1992) (quotations and citations omitted); *United States v. Tempelman*, 111 F. Supp. 2d 85, 90-91 (D.N.H. 2000), aff'd, 2001 WL 725370 (1st Cir. June 26, 2001); *United States v. Estabrook*, 78 F. Supp. 2d 558, 561-62 (N.D. Tex. 1999). Form 23C has been replaced by a computer-generated report (Form 4340) and Form 23C is now only use when the computer is unavailable. See *Erickson v. United States*, 1990 WL 322794 at *7 (W.D. Wash. Aug. 15, 1990). Therefore, as the IRS concedes in its brief, Form 23C is not generally used. Nevertheless, since Form 4340 contains the same information contained on Form 23C and since Form 4340 is certified and signed in essentially the same manner as form 23C.

The courts have treated Form 4340 as establishing a presumption that the assessment was proper. In reality, the courts have created a legal fiction in which the submission of Form 4340, which lists a "23C Date," creates a presumption that a Form 23C was signed. While the courts have said that this presumption is rebuttable by the taxpayer, the IRS concedes that "when the Debtors argue that the 23C Forms were never produced, it is because they probably do not physically exist." Aple. Br. at 15 n.2. In other words, the IRS gets the benefit of a presumption that they admit is likely false. Nevertheless, the efficient operation of the IRS requires that the process be allowed to improve with technological advances. The IRS has developed technology whereby a computer performs the step that was formerly completed manually on Form 23C. The information is then compiled on Form 4340, signed by a certifying officer and provided to the taxpayer. Since the regulations do not specifically require the use of Form 23C but merely that an assessment provide certain information and be signed by an assessment officer, Form 4340 appears to meet the regulatory requirements. In other words, the signing of Form 4340 itself satisfies the regulations, and we need not presume the fiction that a Form 23C was signed. Therefore, in cases where a Form 23C is not completed and signed, the signing of Form 4340 itself establishes the effectiveness of the assessment, and relevant time periods run from the signing of Form 4340, not the fictional signing of Form 23C. As the magistrate judge found, the Certificates of Assessment provided to Appellants on Form 4340 were certified and valid. Therefore, Appellants' first claim has no merit

The Appellants' second claim asserts that, even if the IRS is permitted to file its proof of claim on a form other than Form 23C, the substitute form must be certified with the seal of the district director pursuant to 26 C.F.R. 301.7514-1(c), (d). As an initial matter, Appellants have waived this claim by not raising it in the bankruptcy court. Furthermore, the claim is clearly invalid since the forms sent by the IRS contained the seal. The regulations cited by Appellants merely provide that the various official seals of certain offices of the IRS may be used in lieu of the seal of the Treasury Department when the attestation or certification is required of an officer in that office. The regulations further provide that courts must take judicial notice of the various seals of the IRS. 26 C.F.R. 301-7514-1(c), (d). The regulations merely require that the assessments be signed by "an assessment officer," which is appointed by the district director. 26 C.F.R. 301.6203-1 (2002). Form 4340 complies with this requirement.

After a thorough review of the record and the briefs, we conclude that the district court did not err in dismissing the appeal.

AFFIRMED.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

BRIAN HOMER MARCH and
VICTORIA BACA MARCH,
Plaintiffs-Appellants,

v. No. 02-2087

INTERNAL REVENUE SERVICE,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
(D.C. No. CIV-01-895 LH/KBM)

Submitted on the briefs:(1)
Paul F. Becht of the Becht Law Firm, Albuquerque, New Mexico, for Plaintiffs- Appellants.

David C. Iglesias, United States Attorney, and Manuel Lucero, Assistant U.S. Attorney, District of New Mexico, Albuquerque, New Mexico, for Defendant- Appellee.

Before KELLY, McKAY, and MURPHY, Circuit Judges.

(1) After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f). The case is therefore submitted without oral argument.

McKAY, Circuit Judge.

We originally filed an opinion in this case on February 25, 2003. Appellee Internal Revenue Service subsequently filed a Motion to Amend Opinion and Appellants filed a Response to Appellee's Motion to Amend Opinion. We construe both Appellee's motion and Appellants' response as motions for rehearing and grant them to the extent necessary to clarify our discussion of the procedures and forms used by the IRS. Having reviewed the issues raised in the motion, we hereby vacate our opinion filed on February 25, 2003, and substitute this opinion to clarify that Form RACS 006 satisfies the statutory and regulatory notice requirements. The petitions for rehearing are in all other respects denied.

This is a review of a decision by the bankruptcy court denying Appellants' objection to the IRS's proof of claim for unpaid taxes. The facts, as found by the bankruptcy court and unchallenged by Appellants, indicate that Appellants did not file a tax return or pay income tax for the years 1992 through 1997. As part of Appellants' bankruptcy proceeding, the IRS filed a proof of claim for unpaid taxes. Appellants objected to the proof of claim, arguing that the IRS failed to comply with certain requirements of the Internal Revenue Code and Treasury Regulations. The bankruptcy court dismissed the objections. On appeal, the district court adopted the recommendation of the magistrate judge and dismissed the appeal.

On appeal to this court, Appellants make two claims: (1) that Appellants were never served with the requisite deficiency notices, and (2) that the form provided by the IRS did not contain a seal of the district director of the IRS.

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Manual. As Appellants concede, however, the Service Manual is not binding on this court. Furthermore, no regulation or statute requires that the "copy of the record of the assessment" mentioned in 26 U.S.C. 6203 be made on Form 23C. Nevertheless, regardless of the form used, the IRS must comply with the regulations governing the assessment process. The purpose of these regulations is to ensure both the efficiency and the accuracy of the assessment process. The signature requirement in 26 C.F.R. 301.6203-1 appears to serve multiple purposes. The requirement ensures that an assessment officer reviews the assessment before it is sent to the taxpayer, and the placing of the officer's signature establishes an effective date of the assessment that is relevant for certain timing requirements. Historically, the document reviewed and signed by the assessment officer has been Form 23C. To ensure the taxpayer's ability to challenge alleged errors in the assessment process, the regulations allow the taxpayer to request a copy of certain parts of the assessment record. However, the courts have generally held that the IRS need not provide a taxpayer with a copy of the actual Summary Record of Assessment. Instead, the courts have held that the IRS may submit Certificates of Assessments and Payments on Form 4340. Form 4340 details the assessments made and the relevant date that a Summary Record of Assessment was executed. The courts have also held that these Certificates on Form 4340 "are presumptive proof of a valid assessment." See *Guthrie v. Sawyer*, 970 F.2d 733, 737 (10th Cir. 1992) (quotations and citations omitted); *United States v. Tempelman*, 111 F. Supp. 2d 85, 90-91 (D.N.H. 2000), aff'd, 2001 WL 725370 (1st Cir. June 26, 2001); *United v. Estabrook*, 78 F. Supp.

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4340 were certified and valid. Therefore, Appellants' first claim has no merit.

The Appellants' second claim asserts that, even if the IRS is permitted to file its proof of claim on a form other than Form 23C, the substitute form must be certified with the seal of the district director pursuant to 26 C.F.R. 301.7514-1 (c), (d). As an initial matter, Appellants have waived this claim by not raising it in the bankruptcy court. Furthermore, the claim is clearly invalid since the forms sent by the IRS contained the seal.

The regulations cited by Appellants merely provide that the various official seals of certain offices of the IRS may be used in lieu of the seal of the Treasury Department when the attestation or certification is required of an officer in that office. The regulations further provide that courts must take judicial notice of the various seals of the IRS. 26 C.F.R. 301-7514-1(c), (d). The regulations merely require that the assessments be signed by "an assessment officer," which is appointed by the district director. 26 C.F.R. 301.6203-1 (2002). The Form 4340 provided to the taxpayers establishes a presumption that a Form 23C or RACS 006 was validly signed and certified.

After a thorough review of the record and the briefs, we conclude that the district court did not err in dismissing the appeal, and its Order of December 31, 2002, is AFFIRMED. Appellee's Motion to Amend Opinion, which we construe as a Motion for Rehearing, is GRANTED.

(1) We note that the General Accounting Office, in a report to Congress on March 6, 1996, identified certain inaccuracies and problems with the use of RACS 006. Such inaccuracies and deficiencies have not

been raised with respect to the facts in this case and are therefore irrelevant. Our review is limited to a determination of whether an assessment on RACS 006 qualifies as a summary assessment for purposes of 26 C.F.R. 301.6203-1.

Certificate of mailing

I, Brian Homer March, certify that March 27, 2004, I mailed Three true and correct copies of the foregoing appendix to the petition for certiorari to:

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